



FAIR, TIMELY, ECONOMICAL JUSTICE

ACHIEVING JUSTICE THROUGH EFFECTIVE CASEFLOW MANAGEMENT



THE NATIONAL
JUDICIAL COLLEGE

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William F. Dressel, Laurie Ginn, and other staff from The National Judicial College (NJC) in Reno, Nevada created this pamphlet. NJC invited 33 judges, court professionals, and consultants working in the Caseflow Management area to NJC on January 22-23, 2008 to a working summit entitled “Best Practices in Case Management: A Working Summit.” The list of participants will be included in the companion resource guide. Participants’ work during the two day summit formed the basis for the material contained in this pamphlet and the resource guide. During the Summit, Heidi Kolbe from The Kolbe Company facilitated group discussion and used special meeting management hardware and software to facilitate collection of over 70 pages of material and data from the participants during the two days. Her assistance was invaluable.

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“The sharing of ideas with practitioners and experts was great. We learned a lot from each other. Much of the information validated the earlier caseflow management research. We won’t have to start from scratch.”

*Marcus Reinkensmeyer,
Court Administrator, Phoenix, AZ
Summit Attendee*

INTRODUCTION

The National Judicial College (NJC) convened an Effective Caseflow Management Summit in January 2008, supported by a Bureau of Justice Assistance Grant. The Summit participants were judges, court administrators, and national experts on caseflow management. The information in this pamphlet represents the participants' conclusions and the Summit's work product. The pamphlet's purpose is to introduce or reintroduce effective caseflow management to judges.

The Summit participants agreed on the following definition of caseflow management:

Effective caseflow management is the process through which courts move all cases from filing to disposition. Judicial branch supervision and management is imperative to manage the time and events involved in the life of a case. This process includes all pretrial phases, trials, and all events that follow disposition, regardless of the disposition type. Effective caseflow management makes justice possible both in individual cases and across court systems and seeks to ensure that every litigant receives procedural due process and equal protection.

To expand upon this pamphlet, NJC will publish a resource guide to assist judges who want to create a caseflow management system or evaluate an existing system. This pam-

phlet and the resource guide build upon an extensive body of research from the 70s, 80s, & 90s, that examined causes of delay which recognized that *justice delayed is justice denied*. This research concluded that caseflow management programs did reduce “delay.” While addressing delay is important, the Summit participants concluded that effective caseflow management is more than a tool to reduce delay. It is a core judicial responsibility.

Even with a shift of focus from delay to core judicial responsibility, the basic case management concepts identified in the research apply to managing today’s dockets. An example of relevant past work is the 1984 *ABA National Conference of State Trial Judges’ Standards Relating to Court Delay Reduction*. Section 2.50 sets forth the following general principle:

From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery and court events is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to maintaining a current docket.

The time from filing to disposition is indisputably crucial to fair and impartial justice. Further, effective caseflow management creates a process which facilitates timely judicial decision making and promotes:



- **Access to justice for all;**
- **Due process and equal protection of rights;**
- **The appearance of doing justice;**
- **The fair and impartial treatment of all litigants;**
- **Timely disposition of each case;**
- **Economical court operations and reasonable cost to users to access court services; and**
- **Acceptance by the bar, community, and consumers that the justice system is fair, timely and impartial.**

The summit identified six key concepts integral to an effective caseload management system and the court's ability to provide fair, timely, and economical justice. Judges must accept the responsibility to:

- 1. Provide Leadership, Demonstrate Judicial Commitment, and Use Administrative Skills – to own and lead the process;**
- 2. Document the Existing Caseload and Identify Available Resources – to ensure the timely disposition of cases;**
- 3. Involve the Court Administrator and Court Staff – in actively supporting, executing, and improving the caseflow management system;**
- 4. Consult and Collaborate with the Bar, Citizens, and Court Users - to ensure case management is addressing their needs;**
- 5. Develop a Caseflow Management Plan - that balances access to justice and fair treatment of all parties; and**
- 6. Monitor the Status of Cases - to institutionalize the Caseflow Management Plan and promote ongoing analysis and improvement of the caseflow management system.**



STEP ONE:

Provide Leadership,
Demonstrate Judicial Commitment,
and Use Administrative Skills



For judges to meet their responsibility to manage the court's caseload and work collaboratively with others in the justice system, they must understand and apply effective Caseflow management principles. Also, judges need to reach a consensus on a strategy to manage the court's cases including agreeing on who will lead the initiative. Judges chosen to lead must have the confidence and support of other judges on the court, a commitment to caseflow management, leadership ability, and the administrative skills to implement the initiative. Single judge courts can seek out other similarly situated judges to serve as mentors or to provide counsel.

Judges collectively must assume leadership of the court's caseflow management initiative because other justice system participants have their own agendas:

In the last analysis, court efforts may fail to create and maintain an expeditious pace of litigation simply because of the very complexity of the court process. That process is one in which the judges in the same court may have very different practices for handling cases, and in which prosecutors, public defenders, private attorneys, elected county clerks and sheriffs, probation officers, child protection caseworkers, and independent treatment service providers may all have institutional objectives different from those of the court. All of these participants in the court process interact with one another every day.¹

¹ *Caseflow Management: The Heart of Court Management in the New Millennium*, David Steelman



STEP TWO:

Document the Existing Caseload and
Identify Available Resources



Before embarking upon creating or improving a caseflow management system, judges must know the court's caseload including (a) the number of filings and dispositions each year, (b) pending caseload by case type (e.g.: civil, criminal, domestic, etc.), (c) age of cases – how long each has been pending (d) case type by category (i.e.: robbery, assault, drug offenses, etc.), and (e) number of trials (both bench and jury) scheduled and held. Additionally, court information systems should be developed to provide answers to the following questions for each case:

1) Current status?

- **Last scheduled event? (What and when?)**
- **Next scheduled event? (What and when?)**

2) Events or issues impeding the case's progress? (For each, describe its nature and who is responsible to address)

3) What needs to be done to resolve the case within an identified time?

In many states, a directive or order of the supreme court or state judicial commission serves as the catalyst to establishing systems to provide this information. Nevertheless, even without such directives, a court can create an information system to provide the data necessary to manage its cases.



STEP THREE:

Involve the Court Administrator
and Court Staff

STEP THREE



The court administrator (or in some states the clerk of court) plays a key role in shaping court policy, provides information that judges need to manage cases, obtains resources and training, and motivates court staff to support effective case management. A collaborative relationship between the “presiding” judge (as well as the judge assuming a leadership role for caseflow management) and the administrator or clerk provides a foundation upon which to build an effective caseflow management plan:

Another critical dimension in the caseflow management process is the relationship between the chief or presiding judge and the court manager. The notion is no longer new that a court is better administered when the executive role is shared by the chief judge and the court manager working together as a managerial team. Researchers

and consultants emphasize the importance of the judge-manager team, blending their skills and perspectives in both policy development and administrative caseflow procedures to convert ideas into caseflow management reality. (1)



STEP FOUR

**Consult and Collaborate
with the Bar, Citizens, and Court Users**



Judges cannot effectively manage cases without involving the bar, citizens, and court users/partners such as self represented litigants, probation professionals, law enforcement officers, business community leaders, local and state government officials, treatment community providers, etc. Judges need to identify what these representatives expect from the court and what they can contribute to the effective administration of justice. At the same time, judges must educate them about the purposes of effective caseflow management to obtain their support for the court's plan. Additionally, judges should involve them in the process of planning, implementation, and ongoing evaluation of the court's caseflow management system. United States Supreme Court Chief Justice Warren Burger expressed the importance of bar involvement in a unique version of *justice delayed is justice denied* in his foreword to the ABA's 1986 Defeating Delay publication:

On the occasion of his ascending the bench in England in 1614, Francis Bacon observed, “fresh justice is the sweetest.” Nearly three centuries later, all who work in our court systems - judges, bars, administrators and staff - continue to strive to deliver the best quality of justice at the least cost in the shortest time. . . . While this manual (for lawyers) takes the position that leadership from the judiciary is central to reducing delay, it also states clearly that the help of the organized bar is imperative; the bar can “turn up the pressure” in a system that needs change. Only when the judiciary and the bar work together will needed changes be achieved.



STEP FIVE

Develop a Caseflow Management Plan



Once the commitment has been obtained from the judges, court administrator, court staff, the bar, and court users, documenting an appropriate caseload management plan is a critical step. Key concepts of an effective caseload management plan include:

- **“Intake” or early case evaluation with continuous court supervision of case progress from filing to resolution;**
- **Case evaluation and supervision based on differentiated case management;**
- **Differentiated case management utilizing meaningful and monitorable case events at appropriate intervals;**

- **Caseflow management plan that is published, institutionalized, and consistently applied;**
- **“Consistent application” means judges act in a fair manner with deviation for good cause including reasonable accommodations of lawyers, litigants and other participants; and**
- **Measurable goals.**

All who work in the justice system recognize the importance of local legal culture. Districts, circuits, a court, and even individual judges have their “time honored” traditions. “Our locality is unique” is often the explanation given for the manner in which a court schedule hearings, takes pleas, handles probate, etc. It has been said that “people are 100% in favor or progress but 1000% against change.” Local culture can be both an asset and a barrier to overcome in caseflow management.

Other considerations in designing a plan may arise out of demographic differences. The county may be home to a prison, college, or experiencing population growth/loss where the court sees an impact on certain types of cases (i.e.: foreclosures) requiring a designated docket. Similarly, a jurisdiction with a high concentration of businesses may experience the filing of large numbers of commercial cases that result in the court system establishing a commercial docket or business court. Or, a jurisdiction may encounter increased criminal activity arising out of substance abuse or mental health issues that require the creation of problem solving initiatives such as drug courts, mental health dockets,

domestic violence programs, etc. Therefore, the caseflow management plan may differ from court to court in programs and initiatives, but should always be guided by adherence to these proven concepts of effective caseflow management.

In implementing and executing the caseflow management plan, judges need to follow the plan but also be flexible and apply common sense. For instance, while continuances wreak havoc with the management of cases, judges must consider the needs of attorneys, litigants, and others. A published continuance policy combined with their own experience will serve judges well in achieving a fair balance in enforcing the case management plan while recognizing that justice has its own time frame and may not always be adequately measured by a predetermined timeline.



STEP SIX

Monitor the Status of Cases



After the court creates a caseflow management plan, the court and individual judges must monitor the progress of cases. Monitoring requires judges and staff to have current information on their individual and the court's overall caseload including the number and "type" of cases filed each year, the number of case dispositions, the number of cases pending, and the age of cases, as discussed above. Monitoring the status of the cases will provide the judges, the court administrator, and staff with the information needed to modify and improve their management of cases and the overall caseflow management plan. There are a number of important case reports that give the court a current picture of the caseload as well as trends that are discussed in the resource guide.

CONCLUSION

An effective caseload management system is created over a period of time, often with modifications. Courts should start out slowly and not be overly ambitious. Courts need to identify and take appropriate steps to address “external forces” that impact their ability to manage cases (i.e.: expert reports, production of scientific evidence, etc.). However challenging it may be to create and sustain a case management plan, effective caseload management has many benefits including time savings which allow a court to undertake other justice system initiatives.

Effective caseload management needs to be viewed as a work in progress that will be impacted by variables such as:

- **personal traits or experiences of judges or court administrator;**
- **caseloads;**
- **local legal culture;**
- **resources available to the court;**
- **nature of the court;**
- **court turn-over;**
- **size of the court and the population served; and**
- **societal and economic conditions.**

The crucial role of effective caseload management in the delivery of justice cannot be overstated. Additionally, its significance to a judge personally is likewise crucial. A judge need only review a code of judicial conduct or the central role that case management plays in evaluating judicial performance to understand the importance of caseload management. Case management succeeds when judges institutionalize an effective and efficient system serving the needs of all.

Judges who want more information on effective caseload management should:

- 1. Review NJC's upcoming Resource Guide on Creating a Caseload Management System.**
- 2. Take a few minutes to complete the Personal Perspective Survey for a snapshot of your knowledge of effective caseload management. It was adapted from the National Association of Court Managers' Court Competencies Project.**
- 3. Review David Steelman's The Heart of Court Management in the New Millennium.**
- 4. Participate in an effective caseload management education program.**

EFFECTIVE CASEFLOW MANAGEMENT

Personal Perspective Survey

Adapted from the National Association of Court Managers' Court Competencies Project

I. Concept of Effective Caseflow Management | Agree/Disagree

Effective caseflow management is the foundation upon which accessible, equal, fair, prompt, and economical justice is achieved.

(Check one)

- 1 = Disagree
- 2 = Somewhat Disagree
- 3 = Don't Know
- 4 = Mostly Agree
- 5 = Agree

II. Rank your KNOWLEDGE of each of the following areas (minimal=1 to substantial=10)

- A. ___ How the organization and jurisdiction of courts impact caseflow management
- B. ___ How core court management functions (i.e.: human resources, budget and finance, information technology, records, and facilities) impact caseflow management
- C. ___ Case processing time standards
- D. ___ Basic caseflow axioms and principles (such as early continuous judicial control)
- E. ___ How the economics of the practice of law impacts caseflow management
- F. ___ Alternative Court scheduling systems
- G. ___ Application of Differentiated Case Management (DCM) to different case types
- H. ___ Alternative dispute resolution (ADR)
- I. ___ How to integrate ADR into the court's case management system(s)
- J. ___ How to leverage available external resources to improve caseflow management



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